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THOMAS F. MCFARLAND

April 23, 2010

By e-filing

Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

ENTERED  
Office of Proceedings  
APR 26 2010  
Part of  
Public Record

Re: STB Docket No. AB-1063, *Backtrack, Inc. -- Adverse Abandonment in Cerro Gordo County, IA*

Dear Ms. Brown:

Backtrack, Inc. strongly opposes the request for expedited consideration and waiver of time provisions in Part III at pages 15-16 of a Petition for Waivers and Exemption (Petition) filed by Cerro Gordo County, Iowa (the County) on April \_\_\_\_, 2010.<sup>1</sup>

It is unreasonable in the extreme for the County to request that a Board decision on the Petition be issued and made effective on or before April 28, 2010. The following are among numerous reasons why that request is patently unreasonable:

- (1) The County has failed to serve the Petition on Iowa Traction Railroad Company (IATR), which is an essential legal requirement because IATR is authorized by the Board to provide rail service over the rail crossing at Road B-20 that the County is seeking to have adversely abandoned. Attached to this opposition statement as Appendix 1 is a copy of a Notice of Exemption issued by the Interstate Commerce Commission (ICC) in its Finance Docket No. 31353 on November 23, 1988, *Iowa Traction Railroad Company -- Operation Exemption -- Hermitage Homes, Inc.*, wherein IATR was authorized to operate a 3-mile rail line in Mason City, Iowa between Milepost Nos. 152.5 and 155.5 pursuant to a lease from Hermitage Homes, Inc. Backtrack is the legal successor of Hermitage Homes. The rail crossing at Road B-20 sought to be abandoned is located within that 3-mile rail line. Therefore, an adverse abandonment of the rail crossing at Road B-20 would

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<sup>1</sup> As of this writing on April 23, 2010, the Petition has been served on the undersigned counsel for Backtrack, Inc., but it is not listed as filed on the STB's website.

have the legal effect of adversely discontinuing the ability of IATR to operate over that rail crossing without IATR having received legal notice of the County's proposed action in that respect. The County's Petition and request for expedited consideration cannot lawfully be acted on by the Board until IATR receives the legal notice and opportunity for comment to which it is entitled in accordance with due process of law.<sup>2</sup>

- (2) It would be manifestly unreasonable for the Board to issue a decision on the merits of the Petition before Backtrack has had an adequate opportunity to reply to the Petition. In accordance with 49 C.F.R. § 1104.13(a), Backtrack has 20 days from the filing of the Petition to file its Reply to the Petition. That time period for Reply should not be shortened in the absence of good cause. There is no such showing of good cause in the County's Petition. On the contrary, the time for reply provided for in 49 C.F.R. § 1104.13(a) is specifically required in order to formulate adequate responses to the County's highly unusual requests for waiver, such as waiver from environmental and historic reporting requirements, which is very seldom granted, and waiver from procedural filing dates on the merits.
- (3) It is manifestly unreasonable to expect the Board to rule on the extensive and, in some cases, unique requests for waiver and exemption (the difference is not made clear in the Petition) within only a day or two of filing of the Petition. As of late afternoon on Friday, April 23, 2010, the County's Petition has not been listed as a filed pleading on the Board's website. Thus, the earliest filing of the Petition would appear to be on Monday, April 26, 2010. The County is requesting a decision in this complex matter only two days later. That is unrealistic and unreasonable in the extreme.
- (4) The County itself is responsible for any delay in the processing of its abandonment application. The County states at page 15 of the Petition that Backtrack has been aware of the County's intent to remove the crossing at Road B-20 for more than two years. By the same token, the County has known for more than six months of Backtrack's opposition to removal of that crossing. However, the County delayed institution of abandonment proceedings for over six months, but now seeks substantially accelerated processing of its long-delayed abandonment filings. That position is unreasonable on its face.

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<sup>2</sup> The County's statement at page 15 of the Petition, that "(n)o other party (besides Backtrack) is expected to have any interest in this proposed adverse abandonment," is thus patently false in view of IATR's direct legitimate interest in the matter.

THOMAS F. MCFARLAND  
Ms. Cynthia T. Brown, Chief  
April 23, 2010  
Page 3

**CONCLUSION**

WHEREFORE, for any and all of the foregoing reasons, the Board should deny the County's request for accelerated disposition of the Petition. Unless the Board directs otherwise, Backtrack will file its Reply to the County's Petition within the 20-day period provided for in 49 C.F.R. § 1104.13(a).

Respectfully submitted,



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Thomas F. McFarland  
*Attorney for Backtrack, Inc.*

*TMcF:kl:wp8.0\1437\ltrSTB1*

cc: Mr. Lynn Hawbaker, *by e-mail*

## APPENDIX 1

FR-7035-01  
DO

FD/2  
SERVICE DATE

NOV 23 1988

INTERSTATE COMMERCE COMMISSION

NOTICE OF EXEMPTION

Finance Docket No. 31353

IOWA TRACTION RAILROAD COMPANY--  
OPERATION EXEMPTION--HERMITAGE HOMES, INC.

Iowa Traction Railroad Company (Traction) has filed a notice of exemption to lease and operate certain railroad property owned by Hermitage Homes, Inc. (Hermitage). Traction will lease and operate a 3-mile portion of the rail line from milepost 152.5 to milepost 155.5 in Mason City, IA. The line was previously abandoned by Chicago and North Western Transportation Company in Docket No. AB-1 (Sub-No. 205X), and was purchased by Hermitage (a non-rail carrier). Hermitage leased the line segment to Traction on August 6, 1988. Traction's operation of the line segment is expected to be consummated on the effective date of the exemption.

Any comments must be filed with the Commission and served on Thomas F. McFarland, Jr., Belnap, Spencer, McFarland, Emrich & Herman, 20 North Wacker Drive, Suite 3710, Chicago, IL 60606.

Traction must preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. See Class

Exemption--Acq. & Oper. of R. Lines under 49 U.S.C. 10901, 4  
I.C.C.2d 305 (1988).

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 2, 1988

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

(SEAL)

Noreta R. McGee  
Secretary